
(2013) 11 AP CK 0095

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8232 of 2006

Chintala Anjaneyulu (died) rep. by LRs.

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 20-11-2013

Acts Referred:

Andhra Pradesh Forest Act, 1967 — Section 44(1), 44(2)

Citation : (2014) 2 ALD(Cri) 233 : (2014) 1 ALD(Cri) 564 : (2014) CriLJ 336

Hon'ble Judges : A. Ramalingeswara Rao, J

Bench : Single Bench

Advocate : K. Rathanga Pani Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

A. Ramalingeswara Rao, J.—This writ petition was filed for a writ of Certiorari calling for the records pertaining to the confiscation order passed by Divisional Forest Officer, Kothagudem in proceedings RC No. 1678/95/S7, dated 16-09-2000 confiscating the Petitioner's lorry bearing No. AEK 8051 and confirmed by the learned Principal District Judge, Khammam in CMA No. 33 of 2000 dated 19-01-2006 and quash the same. Petitioners filed the affidavit in support of the writ petition stating that the husband of the 1st Petitioner was owner of a lorry bearing No. AEK 8051 and when the said lorry was coming from Manuguru to Jaggaiahpet with the load of coal driven by the driver, the respondents seized the said vehicle on 20-04-1995 on the ground that the said lorry was carrying 10 logs of teakwood. The owner filed W.P. 8844 of 1995 before this court for release of the vehicle and an order was passed on 27-04-1995 granting interim custody of the vehicle pending enquiry before the Respondent on furnishing bank guarantee of Rs. 50,000/-. Accordingly the lorry was released by the Respondent by order RC. No. 1678/95/S7, dated 09-05-1995. Though the Respondent booked a case vide POR No. 1/5-95, dated 21-04-1995, the husband of the 1st Petitioner did not receive any show-cause notice for a long time and it was assumed that the case was dropped. But, after three (3) years a show-cause

notice was issued on 29-04-1998 to which he submitted his explanation. An enquiry notice dated 27-06-2000 was received by the husband of the 1st Petitioner on 05-07-2000 fixing the date of enquiry as 15-07-2000 which was postponed to 18-08-2000 and on the said date the husband of the 1st Petitioner was present and his Counsel was not present as he was held up in District Court and on that ground he sought time to next day. The Counsel for the husband of the 1st Petitioner filed a petition on 06-09-2000 seeking fixation of a date for enquiry to cross-examine the witnesses and without passing orders on the said petition, the Divisional Forest Officer passed orders of confiscation in Rc. No. 1678/95/S7, dated 16-09-2000 and the same was communicated to the Petitioners on 23-09-2000. Another letter was issued in Rc. No. 1678/95/S7 dated 21-09-2000 rejecting the request of the Counsel for cross-examination of the prosecution witnesses. It was submitted that the Assistant Conservator of Forests is the competent authority and the Divisional Forest Officer is not competent as per Section 44(2) of the A.P. Forest Act, 1967 (for brevity "the Act") and the order rejecting the request for cross-examination of witnesses was passed after passing the order of confiscation and hence principles of natural justice were violated. Aggrieved by the said order of confiscation, the husband of the 1st Petitioner filed an Appeal before the Principal District Judge, Khammam. It was numbered as CMA 33 of 2000 but the said Appeal was dismissed on 19-01-2006 confirming the order of confiscation. Challenging the same, the present writ petition was filed.

2. A counter-affidavit was filed on behalf of the Respondent stating that the lorry bearing No. AEK 8051 was carrying illicit timber under the cover of coal and while the vehicle was passing the check-post at Murredu at about 8.00 a.m. on 20-04-1995 and when the forest officials tried to check the lorry load, the driver of the vehicle picked up speed and sped away without stopping at check-post. The Forest Officials followed the lorry, overtaken it and stopped at Julurpadu village of Khammam District. The driver failed to produce the transport permit for the timber found in the vehicle. The order of confiscation was passed by the competent authority u/s 44(1) of the Act. The owner of the lorry neither produced any witnesses nor submitted any documentary evidence to the satisfaction of the authorized officer to the effect that illegal transportation of forest produce was without his knowledge or connivance or his agent or the person in-charge of the vehicle. The order of confiscation was passed after taking into consideration all the aspects and giving an opportunity to the owner of the vehicle. The owner attended the enquiry on 15-07-2000 but did not choose to cross-examine the witnesses and the Advocate for the Petitioner was absent on that day. It was stated that maximum opportunity was given to the Petitioner u/s 44(2-B) of the Act before passing the confiscation orders by the authorized officer. Even though the show-cause notice was issued after three (3) years no loss was caused to the Petitioner since the lorry was released on a bank guarantee on orders of this court. The orders were passed by the District Court, Khammam on 19-01-2006 in Appeal confirming the orders of confiscation after

hearing both sides and hence the orders were correct.

3. Heard the learned Counsel for the Petitioner and the Counsel for the Respondent.

4. The learned counsel for the Petitioner raised the following three contentions:- viz.,

(1) The owner of the vehicle has no knowledge in commission of the alleged forest offence and hence booking of a case against the husband of the 1st Petitioner was not proper;

(2) The Divisional Forest Officer, Kothagudem is not the competent authority u/s 44(2) of the Act and hence the order of confiscation passed by the Divisional Forest Officer is illegal; and

(3) Since the Divisional Forest Officer rejected the application dated 06-09-2000 seeking fixation of a date for enquiry to cross-examine the witnesses filed by the Counsel for the husband of the 1st Petitioner by proceedings Rc. No. 1678/95// S7, dated 21-09-2000 subsequent to the order of confiscation dated 16-09-2000, principles of natural justice have been violated while passing the order of confiscation.

5. The counter filed on behalf of the Respondents merely states that the Divisional Forest Officer is the competent authority and no reason was shown why the order rejecting the request of the Counsel for the owner of the vehicle was passed subsequent to the order of confiscation. In view of the rival contentions, it has to be seen whether the Divisional Forest Officer is the competent authority and principles of natural justice have been violated. The relevant portion of Section 44 of the Act reads as follows:--

Section 44. Seizure of property liable to confiscation and procedure thereupon:--

(1) Where there is reason to believe that a forest offence has been committed in respect of any timber or forest produce, such timber, or forest produce, together with all tools, ropes, chains, boats, vehicles and cattle used in committing any such offence may be seized by any forest officer or police officer.

(2) Every Officer seizing any property under this section shall place on such property or the receptacle, if any, in which it is contained, a mark indicating that the same has been so seized and shall, except where the offender agrees in writing forthwith to get the offence compounded without any unreasonable delay either produce the property seized before an officer not below the rank of an Assistant Conservator of Forests authorised by the government in this behalf by notification (herein after referred to as the authorised officer) or make a report of such seizure to the Magistrate)

Provided that where the timber or forest produce with respect to which such offence is believed to have been committed is that property of the Central or State Government and the offender is not known, it shall be sufficient if the

officer makes, as soon as may be, a report of the circumstances to the Divisional Forest Officer.

(2-A) Where an authorised officer seizes under sub-section (1) any timber or forest produce or where any such timber or forest produce is produced before him under sub-section (2) and he is satisfied that a forest offence has been committed, in respect thereof, he may order confiscation of the timber or forest produce so seized or produced together with all tools, ropes, chains, boats or vehicles used in committing such offence.

(2-B) No order confiscating any property shall be made under sub-section (2-A) unless the person from whom the property is seized is given,--

(a) a notice in writing informing him of the grounds on which it is proposed to confiscate such property.

(b) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation; and

(c) a reasonable opportunity of being heard in the matter;

A perusal of Sub-section 1 of Section 44 of the Act shows that the offending vehicle and goods can be seized by any Forest Officer or Police Officer. However, Sub-section 2 states that the seized property should be produced before an authorised officer who shall be an Officer not below the rank of an Assistant Conservator of Forests authorised by the Government in this behalf by notification. In the instant case, it is not the case of the Respondents that the Divisional Forest Officer is either equivalent or superior in rank to the Assistant Conservator of Forests and merely stated that he is competent to pass the order of confiscation. But a perusal of A.P. Forest Service Rules, 1997 indicates the cadre of officers. Category-1 of Class-A includes Divisional Forest Officer whereas Assistant Conservator of Forests was included in Category-2. Rule 3 states that the Divisional Forest Officer are appointed by promotion from the post of Assistant Conservator of Forests and hence the post of Divisional Forest Officer is superior in rank to that of Assistant Conservator of Forests. Hence the order of confiscation passed by the Divisional Forest Officer on 16-09-2000 is perfectly legal.

6. Next comes the point relating to the procedure followed by the authorized officer in passing the order of rejection of the application by the Counsel for the owner seeking fixation of a date for cross-examination of the witnesses subsequent to the order of confiscation. Sub-section (2-B) of Section 44 of the Act gives guidance in the matter and it provides for procedural safeguards in the matter of confiscation proceedings. It includes a reasonable opportunity of being heard. Admittedly the date of enquiry was initially fixed on 15-7-2000 on which date, the owner of the vehicle was present and his statement was recorded. The advocate for the owner was not present on that date. The enquiry was postponed to 18-8-2000 and on that date also the Counsel for the owner was absent but an

application for fixation of a date for enquiry to cross examine the witnesses was filed by the Counsel on 06-09-2000. Now it is contended that without passing orders on the said petition, the order of confiscation was passed on 16-09-2000 and the order rejecting the request was passed on 21-09-2000, namely after passing orders of confiscation. Though this procedure cannot be appreciated by this Court, no useful purpose would be served by remanding the matter to the original authority in order to enable the cross examination of the witnesses as the owner of the vehicle expired and the availability of witnesses after 13 years is a remote possibility. Hence this ground also should fail. The lower appellate court elaborately extracting from the judgments reported in 1997 (1) ALT (CrI) 574 (SC) State of Madhya Pradesh Vs. Azad Bharat Finance Co. and Another, , Abdul Khader Vs. Forest Range Officer, Rayachoti, Cuddapah Dist. and others, and Govt. of A.P. Vs. Dinde Kanakamma and another, dismissed the Appeal observing as follows:

In view of the above judgments, there is no merit in the appeal, as the appellant is a forest smuggler and he is not entitled for any sympathy. To prevent this type of offences, action must be stringent and the lower Court had rightly confiscated the entire property and lorry which is just and reasonable. Further, the burden is on the appellant to establish that he never connived with the driver in transporting the teak. To establish his burden, the appellant failed to examine any witness. Under these circumstances, the appeal is liable to be dismissed.

The comments made by the lower appellate court were uncharitable as there was no material before the Court that the appellant was a "forest smuggler" and the courts, while discharging its duties should not be carried away by prejudices and emotions. But this court is in agreement with the finding recorded by the lower appellate court on the point of burden of proof on the appellant with regard to establishing the fact of absence of connivance with the driver in transporting the teak.

In view of the above, the Writ Petition is liable to be dismissed and accordingly the same is dismissed. No costs.